Filed 4/25/12 Marriage of Holmes CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re the Marriage of PHILLIS and MICHAEL HOLMES.	
PHILLIS HOLMES, Respondent, v. MICHAEL HOLMES, Appellant.	C066952 (Super. Ct. No. 09FL03137)

Michael Holmes (Husband) brings this pro se judgment roll appeal from an order following a bench trial, in which the trial court awarded to Phillis Holmes (Wife), as her sole and separate property, a residence purchased during the marriage and held in Husband's name as "a single man." For the reasons that follow, we shall affirm the order.

FACTUAL BACKGROUND

Husband has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.121.)[1] Thus, the appellate record does not include a reporter's transcript of the bench trial. This is referred to as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

The limited appellate record establishes the following.

The parties were married in December 2007.

In October 2008, Husband purchased a home on Laguna Springs Way in Elk Grove for $207,500, and took title in his name as a single man.

Wife petitioned for dissolution of the marriage in May 2009.

In his response to the petition, Husband sought to have the Laguna Springs Way residence confirmed as his separate property.

In May 2010, Wife obtained an order to show cause why Husband should not be required to quitclaim the residence to her. In her declaration in support of the order to show cause, Wife averred the residence was purchased with her separate property funds, received in a personal injury settlement prior to the marriage. Wife made an initial bid to buy the house; Husband offered to continue to bid on her behalf, when serious medical conditions prevented her from continuing. At the time

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[1] Further rule references are to the California Rules of Court.

of the purchase, Husband promised to execute a quitclaim deed in Wife's favor, but since the divorce proceedings, he claimed she had given the property to him.

Husband opposed the order to show cause, and emphasized that his name alone is on the deed. He also declared, "[I] have bank statements, receipts, a copy of the cashier's check proving that I paid for the house in my name only, a letter from the attorney where I received the funds to pay for the house; I have photos of the work that I've done in the house along with the receipts; I also have receipts for all of the furniture that I purchase[d] that is in the home; [a]ll utilities are in my name except for the gas[.]" He explained that, before they were married, Wife gave him $300,000 "to be used as [he] wanted," and he used the money to purchase the residence. He also used the "gift" money to buy furniture for the residence.

Before the date set for hearing on the order to show cause regarding determination of ownership of the residence, each party filed a statement identifying the issues to be determined at the hearing. Husband identified three issues: confirmation of the residence as his separate property, the lis pendens recorded by Wife on the residence, and dissolution of the marriage. Wife asked the court to award her the residence as her separate property, make findings as to the total amount paid by Wife to Husband from her separate property, and order disposition of the "relatively minor and insignificant items of community and separate property" identified in Wife's disclosure

statements. Wife also sought orders that Husband execute a quitclaim deed as to the residence, deliver title of a vehicle to her, enable Wife to obtain car insurance in her own name, and complete all dissolution disclosure documents.

The matter proceeded to an unreported bench trial in November 2010, at which both parties testified. After a review of the evidence, the court found the residence and its furnishings to be Wife's separate property, purchased with cash derived from a settlement she received before marriage. The court ordered Husband to quitclaim the residence to Wife.

DISCUSSION

On appeal, we must presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we must adopt all inferences in favor of the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) An appellant must present an analysis of the facts and legal authority on each point made, and must support the analysis with appropriate citations to the material facts in the record. If an appellant fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

When (as here) an appeal is "on the judgment roll" (*Allen v. Toten*, *supra*, 172 Cal.App.3d at pp. 1082-1083), we must conclusively presume evidence was presented that is sufficient to support the court's findings (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154). Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; rule 8.163.)

Husband first contends the trial court "should have allowed [him] to submit his evidence to support his claim" that Wife made a gift to him before they were married of the proceeds of her personal injury settlement, and he used that gift to purchase the residence. He does not identify what evidence he was prevented from submitting. Absent a reporter's transcript of the hearing at which the challenged order was entered, we must presume on appeal that official duties have been regularly performed (Evid. Code, § 664), and this presumption extends to the actions of trial judges (*Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 ["If the invalidity does not appear on the face of the record, it will be presumed that what ought to have been done was not only done but rightly done."]). This means we must assume—contrary to Husband's argument on appeal—that the trial court properly admitted the evidence it considered in reaching its decision to determine ownership of the residence and its contents, and that other evidence it declined to admit was properly excluded.

Husband's assertion that Wife "did not 'disprove' that she did not gift the money" to him is essentially a challenge regarding the sufficiency of the evidence and, as we have explained, the sufficiency of the evidence is not open to review in a judgment roll appeal. We also note that, in a bench trial, the court is the ultimate arbiter of fact. Here, the parties' competing claims to the property presented a credibility contest: Husband claimed a gift, which Wife denied. The trial court was privy to the testimony of both parties, as well as all of the evidence at trial. Given the court's findings, we presume it found Wife's evidence supporting her claim to the residence and its contents more credible, and we defer on appeal to the trial court's determinations of credibility. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

Nor is the trial court's ruling in Wife's favor erroneous on its face. (Cf. rule 8.163.) Separate property obtained during marriage that can be traced to a premarital acquisition remains that spouse's separate property. (Fam. Code, § 770, subd. (a)(1), (3).) The court found the source of the funds used to purchase the residence to be Wife's separate property. Moreover, a court asked to determine the separate or community character of property acquired during the marriage in the name of one spouse may, based on evidence of the parties' communicated agreement or intention, determine that the ownership status is other than as indicated by the form of title, and the spouse who has gained the "advantage" bears the

burden of showing there was no undue influence. (See *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 343-346.) Mindful that we are bound to conclusively presume all inferences in favor of the judgment, we must presume the evidence established (as Wife indicated in her pretrial submissions) that she did not make a gift to Husband of the money necessary to buy and furnish the residence; he took title in his name only because her health issues precluded her completing the purchase; and they had agreed in advance that he would quitclaim the property to her after the purchase.

Husband also contends the court "should have made decisions regarding the community property and community debts" of the parties, including the degree to which he has a community interest in Wife's retirement, whether he is entitled to compensation for the "sweat equity" he put into the house, and whether there "may be an issue of comingling" of funds in a joint checking account. No error appears on the face of the record in the court's failure to resolve these issues, as Husband's written request for resolution of issues did not ask the trial court to address them.

Finally, Husband contends the court was "presented" with, but failed to address, the issue of Husband's credit card debt incurred to renovate and furnish the property. Without a reporter's transcript of the trial,[2] we cannot evaluate the

[2] In lieu of a reporter's transcript, an appellant may proceed by way of an agreed or settled statement. (Rules 8.134, 8.137.)

extent to which the court was presented with evidence on this topic. Indeed, given the court's finding that the residence and its contents are Wife's separate property, we presume the evidence was sufficient to support its finding; if evidence was presented that Husband incurred credit card debt purchasing these items, we cannot presume such evidence was sufficient to support a finding in his favor.

DISPOSITION

The trial court order is affirmed. Husband shall reimburse Wife for her costs on appeal. (Rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

RAYE, P. J.

BLEASE, J.